4-1700-11834-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA HUMAN RIGHTS DEPARTMENT

Ryan Anderson,

Complainant,

ORDER AND MEMORANDUM ON MOTION FOR SUMMARY DISPOSITION

vs.

U.S. Steel, Minnesota Ore Operations,

Respondent.

U.S. Steel, Minnesota Ore Operations ("U.S. Steel") has made a motion for summary disposition, arguing that there are no issues of material fact warranting a hearing in this matter, and the Administrative Law Judge should therefore order summary disposition in its favor. In substance, U.S. Steel contends that Ryan Anderson was not qualified for the job that he applied for, and that it has therefore proffered a legitimate non-discriminatory reason for not hiring him. U.S. Steel also contends that, as a matter of law, the evidence does not support a claim of reprisal. On the other hand, Mr. Anderson argues that U.S. Steel's motion for summary disposition should be denied because there are issues of material facts that require a hearing in this matter. Specifically, he contends that he was qualified for the job that he applied for, and that U.S. Steel wrongly regarded him as unqualified. The record closed on September 3, 1999, when the Administrative Law Judge received Complainant's Memorandum of Law in Opposition to Respondent's Motion for Summary Judgment.

Stephen J. Snyder, Craig S. Krummen, and Ingrid N. Nybert, Winthrop & Weinstine, P.A., 3200 Minnesota World Trade Center, 30 East 7th Street, St. Paul, Minnesota 55101, represent Complainant Ryan Anderson in this matter. Joseph J. Roby, Jr., Johnson, Killen, Thibodeau & Seiler, P.A., 3811 Norwest Center, 230 West Superior Street, Duluth, Minnesota 55802, represents Respondent U.S. Steel in this matter. Gary R. Kelly, Law Department, USX Corporation, USX Tower – Room 1580, 600 Grant Street, Pittsburgh, Pennsylvania 15219, is of counsel for Respondent.

ORDER

After considering everything in the record, the Administrative Law Judge hereby ORDERS that U.S. Steel's motion for summary disposition be DENIED for the reasons set forth in the attached MEMORANDUM, which is incorporated into this Order.

Dated this 30th day of September, 1999.

BRUCE H. JOHNSON
Administrative Law Judge

MEMORANDUM

This contested case proceeding involves allegations by Ryan Anderson that U.S. Steel discriminated against him based on perceived disabilities in violation of the MHRA. U.S. Steel now argues that this proceeding should be dismissed because, as a matter of law, there are no issues of material fact that require an evidentiary hearing. Specifically, U.S. Steel contends that Mr. Anderson was not qualified for the job that he applied for at its Minntac facility or, alternatively, that it had a legitimate, non-discriminatory reason for not hiring him.[1] But, after reviewing the record, the ALJ concludes that genuine issues of material fact still exist about whether Mr. Anderson was qualified for the job and whether U.S. Steel had a legitimate, non-discriminatory reason for not hiring him. The ALJ is therefore denying U.S. Steel's motion for summary disposition.

I. Factual Background

In the summer of 1996, Mr. Anderson sought employment at U.S. Steel's Minntac facility as part of the company's student summer employment program. Before he began his summer employment, U.S. Steel required him to undergo a physical examination. The physical exam revealed that Mr. Anderson suffered from mild hearing loss, insulin-dependent diabetes, and had surgically-corrected club feet. Nevertheless, U.S. Steel hired him as a student laborer during the summer of 1996, and Mr. Anderson worked as a laborer in the fines and pit departments at Minntac from July 8, 1996, to September 20, 1996. That summer employment involved performing some physically demanding tasks.

During the following spring, Mr. Anderson applied with U.S. Steel for any available laborer position at the Minntac facility. On April 25, 1997, U.S. Steel offered Mr. Anderson an agglomerator utilityman position, contingent upon the results of a second physical examination. The second physical examination essentially revealed what the first had – namely, that Mr. Anderson suffered from mild hearing loss, insulin-dependent diabetes, and had surgically-corrected club feet. After obtaining the results of the second physical exam, U.S. Steel revoked its offer of employment. Mr. Anderson subsequently brought this suit against U.S. Steel, alleging that it violated the MHRA by revoking its job offer based on his perceived physical disabilities.

II. Scope and Standard of Review

Summary disposition is the administrative equivalent of summary judgment in district court practice. It is appropriate in cases where there is no genuine dispute about the material facts, and one party must necessarily prevail when the law is applied to those undisputed facts.[2] When considering motions for summary disposition in contested case proceedings, the Office of Administrative Hearings has generally followed the standards and criteria that have emerged in practice under the Minnesota Rules of Civil Procedure.[3] There, a genuine issue is considered to be one that is not a sham or frivolous, and a material fact is one whose resolution will affect the result or outcome of the case.[4]

The moving party, in this case U.S. Steel, has the initial responsibility of showing that no material fact is in dispute. One way of successfully resisting U.S. Steel's motion for summary disposition would be for Mr. Anderson to show that some specific facts are in dispute that bear on the outcome of the case.[5] Although the evidence presented to defeat a summary disposition motion need not be in a form that would be admissible at the hearing, Mr. Anderson must establish the existence of a genuine issue of material fact by substantial evidence. General claims about factual disputes are not enough to meet his burden.[6] Finally, when considering a motion for summary disposition, an administrative law judge must view the facts in the light most favorable to the non-moving party.[7] In other words, here all doubts and factual inferences must be resolved against U.S. Steel.[8] Put yet another way, if reasonable people could differ about the evidence's meaning under the law, an administrative law judge should not grant summary disposition.[9]

III. Analysis

It is U.S. Steel's position that Mr. Anderson was not qualified for the agglomerator utilityman position or, alternatively, that it had a legitimate, non-discriminatory reason for not hiring Mr. Anderson for that position. U.S. Steel argues that Mr. Anderson cannot demonstrate, as the law requires, that the reason that it gave for not hiring him was a pretext for discrimination. U.S. Steel relies solely on findings that a doctor at its Minntac's dispensary made in order to establish that Mr. Anderson was not qualified for the job and that its decision not to hire Mr. Anderson was legitimate and nondiscriminatory.

As noted by both parties, this employment discrimination case is governed by the three-step analysis set forth in *McDonnell Douglas Corp. v. Green*.[10]

> First, the plaintiff must present a prima facie case of discrimination by a preponderance of the evidence . . . If the plaintiff is successful in establishing a prima facie case, the second step in the McDonnell Douglas analysis creates a presumption that the employer unlawfully discriminated against the employee, and the burden of production shifts to the employer to present evidence of some legitimate, non-discriminatory reason for its

> action . . . If the employer succeeds in carrying its burden of production, the third step of the McDonnell Douglas analysis requires the plaintiff, in order to prevail, to show that the reason or justification stated by the employer is actually a pretext for discrimination.[11]

Minnesota courts have followed *McDonnell Douglas* and have expanded on how a complainant may demonstrate a prima facie case, which is the first step in the analysis.[12] Mr. Anderson will have demonstrated a prima facie case if he shows that: (1) he belongs to a protected class; (2) he applied for and (3) was qualified for a job that Respondent made available to others; (4) he was rejected for the job despite his qualifications and, (5) after rejection, the position remained open or was given to another individual with Mr. Anderson's qualifications. For purposes of this motion, U.S. Steel admits that Mr. Anderson can prove elements 1, 2, 4, and 5. But it disputes existence of the third element — i.e., that he was qualified for the job that he applied for. In fact, it contends that uncontroverted evidence in the record establishes that Mr. Anderson was unqualified for the job, as a matter of law. U.S. Steel also contends that even if Mr. Anderson could prove that he was qualified, summary disposition should be granted because, as a matter of law, it can rely on its doctor's findings as a legitimate, non-discriminatory reason for revoking the job offer, and Mr. Anderson is therefore unable to show that this reason was a pretext for discrimination.

In support of its arguments, U.S. Steel relies heavily on *State ex rel. Khalifa v. Hennepin County*.[13] In that case, Mark Barta applied to Hennepin County for employment as a correctional officer at the county's Adult Correctional Facility.[14] He was offered the job on the condition that he pass a pre-employment physical examination.[15] Mr. Barta had been involved in a car accident in 1982 in which he sustained spinal injuries, and the physical examination revealed that the spinal injuries had caused muscle weakness in his left leg, which caused him to limp. Mr. Barta also wore a brace because of the muscle weakness.[16] At the end of the physical examination, the physician told Mr. Barta that he was at greater risk for future injuries and that he should not be exposed to physical violence.[17]

The examining physician discussed the results of Mr. Barta's physical exam with a supervisor, after which the supervisor withdrew the county's offer of employment.[18] Mr. Barta then asked for and was granted reconsideration of his physical condition and was examined by a Mayo Clinic orthopedic surgeon.[19] The Mayo Clinic physician determined that he was able to work as a correctional officer.[20] Hennepin County's physician reviewed the Mayo Clinic physician's report, but did not change his opinion. When Mr. Barta received notice that the county was not changing its original employment decision not to hire him, he filed a charge of discrimination with the Minnesota Department of Human Rights.[21]

During the hearing in that case, the ALJ heard testimony from two physicians, from Mr. Barta, from the supervisor who interviewed Mr. Barta, and also received into evidence the Mayo Clinic doctor's deposition, the county's physician's medical evaluation report, and numerous exhibits and photographs.[22] The ALJ concluded that

Mr. Barta had demonstrated a prima facie case of disability discrimination. But on appeal, the court of appeals reversed the ALJ's decision and held that Mr. Barta had failed to demonstrate a prima facie case because he "did not meet the minimum objective qualifications for the position of correctional officer."[23]

In the present case, U.S. Steel quotes the following language from *Khalifa* in support of its motion for summary disposition:

> It is undisputed and important that Barta was offered the position of correctional officer conditioned on his passing the pre-employment physical. Barta did not pass the physical. Not only was appellant's physician, who had many years of experience in evaluating applicants for the position of correctional officer, qualified and competent to conduct the physical examination, but appellant's reliance upon its physician's recommendation was reasonable. . . . Appellant's reliance upon its own physician's recommendation was reasonable and its conduct does not give rise to a prima facie case of unlawful discrimination. . . . The record contains nothing which indicates to us that appellant was shown to have a discriminatory motive when declining to hire Barta.[24]

U.S. Steel contends that *Khalifa* stands for the proposition that an employee is unqualified for the job sought, as a matter of law, if he fails a pre-employment physical examination and the employer reasonably relies on the examining doctor's findings. U.S. Steel also argues that, as a matter of law, its reliance on its doctor's findings is a legitimate, non-discriminatory reason for not hiring Mr. Anderson. On the other hand, Mr. Anderson argues that U.S. Steel's reliance on *Khalifa* is misplaced because the facts and circumstances differ significantly from the present case. Because of differences in fact and context, Mr. Anderson maintains that, notwithstanding *Khalifa*, genuine issues of material fact do exist here about whether he was qualified for the job that he was seeking and about whether the reason that U.S. Steel gave for not hiring him was pretextual.

The ALJ concludes that there are material differences between the situation in *Khalifa* and the situation here. First and foremost, *Khalifa* was decided after a full trial on the merits and on a full evidentiary record, not on a motion for summary disposition. In *Khalifa*, the court's decision that the county's reliance on its doctor's findings was "reasonable" was made with the benefit of the testimony from two physicians, the county's own physician, the complainant, and the supervisor who interviewed him, as well as the deposition of a Mayo Clinic surgeon. Unlike a trial on the merits, when considering a summary disposition motion, the administrative law judge must view the facts in the light most favorable to the non-moving party. The court of appeals was under no such constraint when it decided *Khalifa*.

U.S. Steel argues that *Khalifa* stands for the broad proposition that when an employee fails a pre-employment physical and the employer claims it reasonably relied on its doctor's findings, one must find that the employee was unqualified for the job

sought, as a matter of law. It also suggests that if an employer reasonably relies on its doctor's findings, then no discriminatory motive exists, as a matter of law. The ALJ disagrees. Interpreting *Khalifa* in that way would prohibit complaining parties from ever raising legitimate questions about the doctor's examination methods, the thoroughness of the exam, or the reasonableness of the doctor's findings. It would also preclude other evidence of pretext. The ALJ is not persuaded that the court of appeals intended to preclude those kinds of inquiries in human rights cases. Moreover, that interpretation is not supported by other case law, particularly on a motion for summary disposition.[25]

In the present case, Mr. Anderson disputes the adequacy of the second pre-employment physical examination that was conducted by U.S. Steel's doctor. For example, Mr. Anderson offers his own testimony that neither his hearing loss, his diabetes, nor his surgically-corrected club feet have ever caused him any difficulties in working or doing other physical activities. And he claims that during the physical exam, U.S. Steel's doctor never inquired whether these conditions ever caused Mr. Anderson any difficulties in performing physical tasks.

This case also differs from the situation in *Khalifa* in another important respect. Mr. Anderson had previously applied to U.S. Steel for work as a summer employee. Before accepting that application, U.S. Steel required him to have a pre-employment physical examination. As a result of that physical exam, he was given certain medical restrictions. But despite those restrictions, U.S. Steel ended up hiring Mr. Anderson as a laborer during the summer of 1996. It is undisputed that Mr. Anderson successfully performed the physical tasks he was assigned as a summer employee at Minntac. In April 1997, when Mr. Anderson was required to undergo a second pre-employment physical exam, medical restrictions were again placed on him. The restrictions resulting from the second pre-employment physical were substantially similar to the medical restrictions resulting from the first physical exam. Notwithstanding the medical restriction similarities and the fact that Mr. Anderson had already worked in a laborer capacity at Minntac, U.S. Steel revoked its job offer of a permanent position. Mr. Anderson argues that his employment history at U.S. Steel is evidence that his second pre-employment physical exam was inadequate and that he was, in fact, qualified for the agglomerator utilityman position and other laborer positions. These are facts that were not present in *Khalifa* and here, viewing the evidence in the light most favorable to the nonmoving party, they raise genuine issues of material fact, issues about whether he was qualified for the job that he was seeking.

In *Khalifa*, the court of appeals also found that "[t]he record contains nothing which indicates to us that appellant was shown to have a discriminatory motive when declining to hire Barta."[26] Again, the court made this finding after a hearing on the merits and not on a summary disposition motion. In the present case, Mr. Anderson has also presented some evidence of a discriminatory motive. He points out that at U.S. Steel's Minntac facility, at least eight full-time employees have hearing impairments, four of whom work in areas that require hearing protection.[27] Mr. Anderson points out that at least one Minntac employee has diabetes.[28] This employee works in the concentrator building, an area in which Mr. Anderson contends

Respondent restricted him from working.[29] Also, Mr. Anderson presents evidence that Respondent has hired at least eight full-time employees at Minntac that have the same climbing restrictions as Mr. Anderson.[30] Viewing that evidence in the light most favorable to Mr. Anderson, the ALJ concludes that he has presented enough evidence of pretext or discriminatory motive to warrant an evidentiary hearing on those issues.

In summary, the ALJ finds that issues of material fact are in dispute regarding whether Mr. Anderson was qualified for the job that he was seeking and about whether the reason that U.S. Steel gave for not hiring him was a pretext for discrimination. And for these reasons, the ALJ has denied U.S. Steel's motion for summary disposition.

B.H.J.

---

[1] In his reply memorandum, Mr. Anderson has voluntarily agreed to dismiss Count Two (Reprisal) of his Complaint. Complainant's Memorandum in Opposition to Summary Disposition ("Compl.'s Memo.") at 35. The ALJ will keep the reprisal issue under advisement pending a motion or stipulation by counsel. And because of Mr. Anderson's voluntary agreement, the ALJ will not address arguments of U.S. Steel that relate to the reprisal allegations.

[2] *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); Minn. Rule pt. 1400.5500K; Minn. R. Civ. P. 56.03.

[3] Minn. R. Civ. P. 56; *compare* Minn. Rules, pt. 1400.6600.

[4] *Illinois Farmers Insurance Co. v. Tapemark Co*., 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984).

[5] *Thiele v. Stitch*, 425 N.W.2d 580, 583 (Minn. 1988); *Hunt v. IBM Mid America Employees Federal*, 384 N.W.2d 853, 855 (Minn. 1986).

[6] *Id*.; *Murphy v. Country House, Inc*., 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (Minn. 1976); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. Ct. App. 1988), citing, *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

[7] *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. Ct. App. 1984).

[8] *See*, e.g., *Celotex*, 477 U.S. at 325; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971); *Thompson v. Ca*mpbell, 845 F. Supp. 665, 672 (D. Minn. 1994).

[9] *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 250-51 (1986).

[10] 411 U.S. 792 (1973).

[11] *Sigurdson v. Isanti County*, 386 N.W.2d 715, 720 (Minn. 1986)

[12] *Id*.; *Butler v. Leadens Investigations and Sec., Inc.,* 503 N.W. 2d 805, 808 (Minn. Ct. App. 1993).

[13] 420 N.W. 2d 634 (Minn. Ct. App. 1988).

[14] *Id.* at 635.

[15] *Id.*

[16] *Id.*

[17] *Id.* at 637.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] 420 N.W.2d at 641.

[24] 420 N.W.2d at 640-41.

[25] *See Lewis ex rel. Quinn v. Ford Motor Co.,* 282 N.W.2d 874 (Minn. 1979) (remanding the trial court's grant of summary judgment when the record indicated a substantial medical dispute regarding an employee's physical condition posed a serious threat to his health or safety).

[26] *Khalifa*, *supra*, 420 N.W.2d at 641.

[27] Affidavit of Craig S. Krummen ("Krummen Aff."), dated Sept. 2, 1999, Ex. 9 at 2.

[28] Krummen Aff. Exs. 15 & 16

[29] Krummen Aff. Ex. 3 at 67-68, and Ex. 4 at 80.

[30] Krummen Aff. Ex. 16.